KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

A NEW YORK LIMITED LIABILITY PARTNERSHIP

901 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005-2327

(202) 682-3500
FAX (202) 682-3580

425 PARK AVENUE
NEW YORK, NY 10022-3598
(212) 836-8000
FAX (212) 836-8689

1999 AVENUE OF THE STARS
LOS ANGELES, CA 90067-6048
(310) 788-1000
FAX (310) 788-1200

NINE QUEEN'S ROAD CENTRAL
HONG KONG
852-2845-8989
FAX 852-2845-3682

WRITER'S DIRECT DIAL NUMBER

November 22, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 87-268

Dear Mr. Caton:

On behalf of Malrite Communications Group, Inc., there is transmitted herewith and filed an original and nine copies of its "Comments on Sixth Further Notice of Proposed Rulemaking".

Should there be any questions concerning the enclosure, kindly communicate directly with the undersigned.

Very truly yours,

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP

By: Bruce A. Eisen

Enclosure

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Advanced Television Systems	)	MM Docket No. 87-268
and Their Impact Upon the	)	
Existing Television Broadcast	)	
Service	)	

TO: The Commission

MALRITE COMMUNICATIONS GROUP, INC.
COMMENTS ON SIXTH FURTHER NOTICE OF PROPOSED RULEMAKING

Malrite Communications Group, Inc. ("Malrite"), by its attorneys, hereby submits its comments with regard to the Commission's Sixth Further Notice of Proposed Rulemaking, FCC 96-207, released August 14, 1996. In support thereof, the following is shown:

1. In the Sixth Further Notice the Commission set forth various proposals to explicate the digital television ("DTV") channel assignment process while at the same time attempting to preserve undisrupted television service. The Commission's stated goal was to propose policies for developing initial DTV allotments, procedures for their implementation, and plans for spectrum recovery. A "draft" DTV Table of Allotments was set

forth (Appendix B) premised upon "principles of accommodating all eligible existing broadcasters" and ensuring sound spectrum management.

2. The Commission noted that its draft Table was intended to foster service replication/maximization and that broadcasters would be provided with a DTV allotment capable of providing digital TV coverage of a geographic area that is comparable to their existing NTSC coverage. Moreover, the Commission recognized the prospect of alternative allotments for specific markets and proposed procedures by which broadcasters could request appropriate relief.

3. Malrite has reviewed comments filed on behalf of the Broadcasters Caucus which has proposed a "modified table" in response to the Commission's invitation to submit alternative channel plans which, inter alia, offered corrections and changes to "ensure better DTV service during the transition period...". Those comments address matters relating to the minimization of disruption, maximizing service, and maximizing spectrum flexibility, each of which is a laudable goal to which Malrite subscribes. Indeed, while Malrite generally supports the Broadcasters Caucus, it hereby submits its own comments in response to the Sixth Further Notice which it believes reasonably

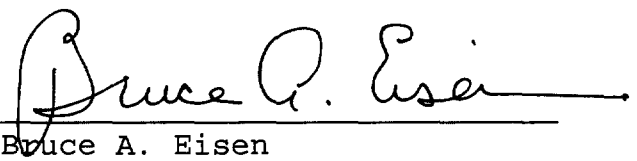
address the impact of the migration to digital television upon the industry and upon the Malrite television stations in particular.

4. Annexed hereto is an Engineering Statement in support of Malrite's comments. The Statement cites Malrite's past and present position within the broadcasting industry, and its enthusiasm for the Advanced Digital Television Service. The Statement makes particular reference to a number of matters raised by the Broadcasters Caucus and endorsed by Malrite, but offers additions and clarifications to better assist the Commission in finalizing migration patterns and avoiding certain inequities reflected in the Sixth Further Notice. These include comments concerning the orderly improvement of lower-power facilities, approaches to "maximize" the service areas for digital TV facilities, methods to expedite the transition to DTV service, transmitter site relocation limits and the voluntary resolution of the DTV allotment/assignment process thereby allowing broadcasters, themselves, to determine how respective service areas are to be configured.

In light of the foregoing, Malrite requests the Commission to consider these comments in response to the Sixth Further Notice so that the migration to digital television can best serve the public interest and the television industry as a whole.

Respectfully submitted,

MALRITE COMMUNICATIONS GROUP, INC.

By: 

Bruce A. Eisen
Its Attorney

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP
901 15th Street, N.W.
Suite 1100
Washington, D.C. 20554
(202) 682-3538

EVANS
ASSOCIATES

ENGINEERING STATEMENT
in Support of the Malrite Response
to the FCC's Sixth Further Notice of Proposed Rulemaking
in the Matter of
Advanced Television Systems
MM Docket No. 87-268

EVANS
ASSOCIATES

This engineering statement has been written by Ralph E. Evans III, of Evans Associates Consulting TeleCommunications Engineers in Thiensville, Wisconsin, on behalf of Malrite Communications Group Incorporated. This statement is in response to the FCC's *Sixth Further Notice of Proposed Rulemaking* (MM Docket 87-268) which addresses the matter of Advanced Television Systems and their impact upon the existing broadcasting service. Evans Associates has been retained by Malrite to assess the effect the proposed migration to digital television would have upon the industry as a whole, and the Malrite television properties in particular. Accordingly, this exhibit has been prepared.

Background

Malrite has a long history of responsible and effective stewardship with respect to the public spectrum resources represented by its radio and television properties. Beginning in the 1950's, many unique technological and program innovations were pioneered by Malrite, beginning with AM Broadcasting, extending to FM Broadcasting, and ultimately resulting in today's sophisticated interstate television operation[1]. Malrite is currently the licensee of or is affiliated with the following television facilities:

CALL	CHANNEL	HAAT (m)	ERP (kw)	CITY	STATE
WFLX	29	457	5000	West Palm Beach	FL
WXIX	19	306	4680	Newport	KY
WOIO	19	351	3720	Shaker Heights	OH
WNWO	24	424	4370	Toledo	OH
WLII	11	360	200	Caguas	PR
WSUR	9	857	178	Ponce	PR

As is evident from this tabulation, the Malrite television facilities represent an optimized set of program service outlets. Several of these stations have also recently applied for construction permits to improve facilities to an even higher level.

Given the company history of programming innovation and its record of providing the best practical technical service to the public[2], Malrite enthusiastically applauds the arrival of the Advanced Digital Television Service, which will enable both improved quality

[1] As an example, Malrite has conducted numerous and extensive experimental AM and FM propagation tests, including test site field measurements on its FM property in Los Angeles which documented deficiencies in the FM service contour curves in situations involving high antennas and negatively sloping terrain. Malrite has been a early pioneer in FM and TV broadcasting, as evidenced by its commitment to FM and UHF television before they became mainstream outlets.

[2] Malrite designed and built a unique and technically sophisticated multi-site synchronous TV/translator network in Puerto Rico, which was developed to overcome severe terrain limitations and provide wide area service.

pictures and simultaneous multi-casting. Malrite agrees that both of these improvements are necessary in order to allow the over-the-air free service to compete with other entertainment mediums in each of the unique television markets in the U.S. and Puerto Rico. Malrite is, however, understandably concerned that the migration to the advanced television service proceed in a manner which is non-disruptive, protects the public investment in free television service, and uses only the resources which are required to form a proper and robust nationwide infrastructure. In this spirit, then, these comments in response to the *Notice* are offered.

Malrite DTV Assignments

The following allocations have been made to the Malrite affiliated stations as part of the Sixth *Notice*:

CALL	NTSC Ch	FCC DTV Ch	FCC ERP (kw)	MST DTV Ch	MST DTV ERP (kw)
WFLX	29	28	416.7	28	217.9
WXIX	19	20	318.9	20	187.3
WOIO	19	20	238	20	145.4
WNWO	24	34	329	34	231
WLII	11	31	1445	--	
WSUR	9	41	776.2	--	

This table reflects a number of issues of concern to all broadcasters, and all viewers of free TV as outlined subsequently.

Summary of Issues, and Principles of Agreement

Comments on a variety of global issues were requested by the *Notice*, some of which are addressed by this exhibit. Other issues have arisen as a result of the Broadcasting Industry's unified consensus effort known as the *Broadcaster's Caucus*, jointly sponsored by the National Association of Broadcasters and the Public Broadcasting Service. With the assistance of the *Association of Maximum Service Telecasters*, the Broadcaster's Caucus has adopted a position on many of the issues raised in the *Notice*, as well as an alternative DTV allocation assignment table.

Malrite supports the MST/Caucus position on most of the issues and channel assignments, but believes that some additional clarifications and important additions are required in the interests of providing a smooth migration from NTSC to DTV. In particular, Malrite supports the FCC and the MST/Caucus positions on the following critical issues:

- Malrite agrees with the *Caucus* that adjacent channel assignments should not be made to different licensees in the same market. Although the FCC allotment table attempted to avoid such assignments as well, the *MST* table is more successful. As an example, WUAB in Lorain Ohio would have had to employ a low-power DTV facility directly adjacent to a non-co-located high power NTSC station. In the main, Malrite supports the channel assignments made by the *MST/Caucus* table as a substantial improvement over the FCC table.

- Malrite agrees with the FCC and the *Caucus* that initial power levels should be determined based upon service area replication ("contour matching"), although there may be several unresolved issues with respect to the relative reception radii which should be assigned to VHF and UHF facilities[3]. The *Notice* requests additional input in this matter. Accordingly, Malrite hereby documents its belief that subsequent power increases should be achievable on an orderly and expeditious basis as required to improve service to an expanding market, and as required to adjust to real-world DTV reception factors. In addition, Malrite believes that every effort should be made so as not to "lock in" a class of "super power" stations in each market, which would restrict competition. The plan herein presented to accommodate future service area adjustments would, in Malrite's opinion, address an issue which the *Caucus* has described as "an impossible consensus problem".

- Malrite agrees with the *Caucus* that use of the **entire** broadcast band during the transition period is **mandatory**. This is in opposition to the position taken by the FCC, which has stated that early recovery of spectrum is a "secondary goal". All channels from two to sixty-nine must be employed in order to minimize the number of stations which may be disenfranchised based upon known and unknown technical incompatibilities[4]. (Use of all frequencies now will facilitate repacking later, and will release the maximum contiguous spectrum for use by new services, as outlined in the *Caucus* position paper).

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[3] For instance, Malrite does not agree with the receiver noise figures for VHF and UHF as employed either by the FCC or the *Caucus*. In addition, Malrite believes that present VHF service areas, particularly that of low-band VHF stations, are overstated because of propagation and interference factors which are extensively described in today's engineering literature but which are not reflected in the FCC curves used to calculate service contours. These considerations, however, are both secondary and divisive, and as such are amenable to conformation on a "ad hoc" basis according to the procedure outlined subsequently.

[4] The "n+1 problem" is a good example of this possibility. Malrite has two stations for which the DTV assignment is one channel higher than the existing NTSC channel. At this point, no one has fully evaluated whether such channel proximity can successfully avoid self-interference, especially in the first generation of digital receivers. Stations which are assigned this configuration may well require another channel possibility after additional field information is received.

- Malrite encourages the FCC to "adopt a flexible policy toward channel and facility changes", as proposed by the *Caucus*. Malrite's instant response will provide an improved mechanism whereby such flexibility can be achieved.

- Malrite agrees with the FCC and the *Caucus* that the transition to digital TV be done in an orderly and non-disruptive manner, with little or no inconvenience to the public. The instant response provides an ongoing, flexible mechanism for responding to public service requirements in real time.

- Malrite agrees with the *Caucus* position that broadcasters should be able to choose which of the two channels they will be able to utilize after the 15-year simulcast period is over, subject to the limitations imposed by repacking.

- Malrite agrees that the FCC and the broadcasters should work closely with the receiver manufacturers to evolve an effective reception *system*. This system would include not just receiver standards, but also standards for antennas for off-the-air viewing[5].

As is evident by the above discussion, Malrite is responding to the *Notice* both as a licensee concerned about the effect of the transition upon its broadcast properties, and as a corporate citizen with a wealth of experience of interest to the global television community. It is Malrite's belief that the instant exhibit will assist the FCC in obtaining the insight required to determine and finalize migration parameters for the television broadcast industry as a whole.

Summary of Recommended Additions and Clarifications

As the FCC moved away from its proposal to "equalize" coverage areas in the DTV service, the issue of ongoing future improvement in those facilities which are relegated to a relatively lower power status becomes paramount. This is due to the following factors:

1. The *Notice* represents a fundamental shift away from the FCC's historical concept of a **pre-approved maximum power level** for each station in each of the three television service bands[6]. The power initially assigned to each

[5] The antenna component of the digital receiver has not received as much attention as it perhaps is entitled to. The reception of digital signals is especially sensitive to multi-path signals and reflections due to antenna mismatches, in spite of improved "smart" receiver circuitry designed to minimize the problem.
[6] Present limits are: Low VHF = 100 kw, High VHF = 316 kw, UHF = 5,000 kw. These limits were established based upon differential propagation.

facility could no longer be increased as a matter of right, vastly complicating site re-location and service improvements to expanding populations[7].

2. The *Notice* anticipates the creation and maintenance of two classes of facilities, a super-power class and a less advantaged class. Advertisers and many viewers today understand that the power levels assigned to VHF and UHF stations reflect real differences in the respective propagation characteristics of these portions of the spectrum. Such would not be the case when most DTV facilities are assigned to the UHF band, and, as is the case in some markets, a 100 kw DTV station must compete head-on with a 2,000 kw blockbuster. The following table is pertinent with respect to the Malrite stations:

CALL	FCC DTV ERP kw	Example Competitor	Competitor ERP kw	MARKET
WFLX	416.7	Ch 5 (DTV:19)	3,994	W. Palm Beach
WXIX	318.9	Ch 12 (DTV:31)	1,846	Cincinnati
WOIO	238	Ch 3 (DTV:41)	4,633	Cleveland
WNWO	329	Ch 11 (DTV:66)	1,639	Toledo

As can be seen, substantial disparities exist in every Malrite market, and these disparities are replicated throughout the allocation table. While Malrite recognizes that it would not be possible to assign equal power levels to all stations in each community, the FCC is strongly encouraged to provide a mechanism whereby lower-power facilities can improve their service areas in an orderly manner, without resorting to a cumbersome set of inflexible rules or unnecessary centralized "coordinating committees" which may add one more level of bureaucracy, and which could not have an complete knowledge of any individual market.

At the same time, it may not be appropriate for *every* low-VHF TV to receive "parity" in DTV UHF coverage based upon existing propagation models. A "maximum" disparity could be assigned as a target goal in each market, for instance, so that severe differentials do not impact the less fortunate stations and cast these stations into permanent inferiority. A slight "trimming" at the high end could also reduce the overall DTV interference coefficient[8]. In

[7] The FCC has attempted to address this issue through such mechanisms as the assignment of a "free move" 3-mile radius, but such limits are arbitrary and do not respond to individual market dynamics.

[8] A hypothetical example may be instructive. If an existing VHF station has a given interference free service area, it could be assigned a UHF DTV channel which receives interference at a completely different azimuth. Whether or not this azimuth and distance is significant in the market, the matching algorithm

addition, Malrite believes it is important not to freeze power levels before additional information is obtained on the *real* DTV-to-NTSC equivalent power ratio. It is by no means clear to Malrite that differentials exceeding 10 db are realistic, since they may result in the displacement of one failure mode with another[9].

In the *Notice*, the FCC requested comments on approaches which would "maximize" the service area for all digital TV facilities, with the goal of partially "equalizing" coverage areas. As pointed out previously, complete equalization is neither possible nor fair, because it does not take into account the length of time a station has been serving its viewers, and does not readily anticipate the establishment of new "antenna farms". The *Notice* also requests input on methods to ensure a swift transition to DTV service, and asks, in particular, whether a three-mile transmitter siting range would be an appropriate relocation limit. In order to address these critical issues, Malrite suggests the following approach:

1. **Adoption of Modified Table**

   Malrite suggests that the modified allotment table be adopted and employed as a starting point, along with the whole-band frequency plan as outlined by the *Caucus*. It is anticipated that small adjustments and corrections will continue to be necessary, but these should not necessarily impede the progress of transition. The resulting interference areas caused to each facility would thereby be established as a baseline.

2. **Dynamic Contour Location**

   During the six-year DTV build cycle, it is suggested that each TV station be encouraged to seek co-located sites in order to minimize orientation and adjacent channel technical problems. As part of this effort, stations could negotiate directly with both local and other distant pertinent facilities in order to maximize the respective service areas with respect to populations pertinent to their markets, a process which was not anticipated by the "automatic" computer assignment algorithm employed by the FCC and MST. Only "real world" refinement can be used to adjust service areas according to the following principles:

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would increase power until the service area criteria is satisfied, even though a more modest power level would serve the market just as well and would cause less preclusion to other DTV assignments.

[9] Malrite finds arguments concerning the "avalanche effect" to be unpersuasive. Viewer tolerance of frequent picture "lockups" may be just as aggravating to the DTV viewer as are snow and flutter to NTSC viewers.

- Move baseline interference areas to low population locations, or over bodies of water by "trading off" interference areas **without** causing a **net increase** in interference or a **net decrease** in service area, a practice pioneered by the FCC's "go-no-go" AM rules. Directional antennas, site relocation, power level adjustments and terrain shielding would be used as tools to accomplish the changes in interference and service areas.

- Extend service contours and increase power in directions which would not cause new interference. Power levels could be limited to either a set value or the highest power utilized in a given market.

In this manner, the Commission would not be burdened with numerous requests for waiver of the either the "three mile" site location limitation or of the contour protection rules. This dynamic contour adjustment would be well defined, and could be facilitated via the following procedure:

- Local negotiations among stations would assign the most appropriate parameters and site or sites for DTV and NTSC operation. NTSC site relocation would continue to be governed by existing Rules, subject to non-interference to DTV assignments.

- Individual stations in each market would negotiate directly with distant co-channel and adjacent channel NTSC and DTV licensees and permittees so as to enhance and protect their high-population geographic areas, at the expense of other less serviceable locations if necessary. Directional antennas, terrain shielding, and other standard techniques would be used which are employed today in the TV and other services. Continuing liaison would be maintained with industry groups such as NAB, MST and PBS, although none of these organizations would perform an "advise and consent" role. No net increase in interference area or populations would be anticipated.

- Such agreements would be subject to ratification by the FCC, thereby preserving the FCC's statutory regulatory authority.

3. **Dynamic Channel Reassignment as Necessary**

   Subject to limitations imposed by ultimate repacking[10], channels should be kept in reserve to address the possibility that some combinations of channels may not work together in the same market, such as the *n+1* assignments.

4. **Incorporation of Recently-Granted & Outstanding Construction Permits**

   Malrite suggests that recently-granted and new NTSC facility improvement applications continue to protect DTV contours, both as initially defined and as ultimately modified. The protection rules and ratios should be continually refined on the basis of field test feed-back.

   New NTSC construction permit applications should be evaluated on a co-equal basis with DTV modifications. The FCC should encourage broadcasters to work out mutually exclusive proposals among themselves. Indeed, there will be an incentive to do so, since the extended delay inherent in the contention process would cause coverage opportunities to be lost.

5. **Continuing Channel Optimization of the Allotment Table**

   It is recommended that the procedure already put in place by NAB and PBS, consisting of regional coordinating committees, continue to function in order to facilitate changes in channel assignments as they become practical. It is also expected that corrections to the FCC database will continue to be discovered as the tower location co-ordinate correction initiative goes forward.

Conclusion

In the opinion of Malrite and this engineer, the procedure as outlined above successfully addresses the inequalities and incompatibilities inherent in the process as outlined in the *Notice*. While it is recognized that, in the past, applications to relocate broadcast transmitters and make other facility improvements have been denied by the FCC even though a public benefit would derive therefrom, a mature and successfully operating infrastructure base existed to support this public interest tradeoff in order to protect the integrity of the allocation process.

The *Notice* is cognizant of a required optimization cycle in that "(the FCC is) proposing to allow stations to maximize or increase their service area where such an increase would

[10] The number of double and triple moves for broadcast stations should be kept to a minimum in order that DTV transition costs not escalate to the point where it would slow down the transition to DTV.

not create ***additional*** interference" (emphasis added). As further support of the Malrite concept, the *Notice* recognizes that "the implementation of DTV will be a dynamic process and .. mechanisms are needed to accommodate the inevitable changes that will occur. ... In this regard, (the FCC intends to provide) broadcasters with the flexibility to develop alternative allotment approaches and plans both prior to and after the our adoption of a final Table of Allotments."

The FCC also recognizes the value of voluntary negotiations: "We continue to believe that voluntary negotiations among broadcasters should be permitted as part of the DTV allotment/assignment process."

It is respectfully pointed out that a high level of integrity can be restored with respect to DTV service allocations once the build cycle is complete, and all necessary contour modifications have been made. The *Notice* anticipates doing away with the FCC's **minimum spacing requirements** for DTV, which had provided a substantial buffer for facility improvements, but does not replace it with the flexibility required to build a new structure of TV stations adapted to each market. The Unified Response by the *Caucus* urges that "The Commission should permit DTV stations to modify their stations in response to real world demands." Malrite's suggestions take the logical next step, in allowing TV facilities to agree among themselves how the respective service areas are to be configured. After the build cycle, if it is deemed in the public interest by the FCC, no further changes in interference areas would be allowed. In addition, new interference caused in areas presently receiving interference as a result of other stations would similarly be prohibited.

It is therefore Malrite's opinion that the modifications as proposed would be in the public interest; Malrite therefore respectfully requests that the instant response be considered in the final formalization of the DTV transition Rules and Regulations.

EVANS
ASSOCIATES

AFFIDAVIT

COUNTY OF OZAUKEE

SS:

STATE OF WISCONSIN }

RALPH E. EVANS III, being duly sworn upon oath deposes and says:

That his qualifications are a matter of record with the Federal Communications Commission;

That he is a Consulting TeleCommunications Engineer in Wisconsin, and is a partner in the firm of Evans Associates;

That this Firm has been retained by Malrite Communications Group to prepare this engineering exhibit;

That he has either prepared or directly supervised the preparation of all technical information contained in this engineering statement, and that the facts stated in this engineering statement are true of his knowledge, except as to such statements as are herein stated to be on information and belief and as to such statements he believes them to be true.

Ralph E. Evans III

Subscribed and sworn to before me this 21st day of November, 1996.

Notary Public

My Commission expires September 24, 2000.

CERTIFICATE OF SERVICE

I, Toni R. Daluge, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that on this 22nd day of November, 1996, a copy of the "Malrite Communications Group, Inc. Comments on Sixth Further Notice of Proposed Rulemaking" was sent via United States mail, postage-prepaid to the followng:

Chairman Reed E. Hundt *
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Commissioner James H. Quello *
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Commissioner Andrew C. Barrett *
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Commissioner Rachelle B. Chong *
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Commissioner Susan Ness *
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Marilyn Mohrman-Gillis, Esq.
Association of America's Public
Television Stations
1350 Connecticut Ave, N.W.
Washington, D.C. 20036

Sam Antar
Vice President, Law & Regulation
Capital Cities/ABC, Inc.
77 West 66th Street
16th Floor
New York, New York 10023

John C. Siegel
Senior Vice President
Chris-Craft Industries, Inc.
650 California Street
San Franciso, California 94108

James J. Popham, Esq.
Association of Local Television Stations, Inc.
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036

Mark W. Johnson, Esq.
CBS, Inc.
600 New Hampshire Ave, N.W.
Suite 1200
Washington, D.C. 20037

Molly Pauker, Esq.
Fox Television Stations, Inc.
5151 Wisconsin Ave, N.W.
Washington, D.C. 20016

Henry L. Bauman, Esq.
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Paul A. Jameson, Esq.
Public Broadcasting Service
1320 Braddock Place
Alexandria, Virginia 22314

Michael J. Sherlock
National Broadcasting Company, Inc.
30 Rockefeller Plaza
Suite 1022
New York, New York 10112

Dennis FitzSimons
Tribune Broadcasting Company
435 N. Michigan Avenue
Chicago, Illinois 60611

Jonathan D. Blake, Esq.
Gerald P. Goodman, Esq.
Victoria Huber, Esq.
Covington & Burling
1201 Pennsylvania Ave, N.W.
Washington, D.C. 20044

Toni R. Daluge

* Hand Delivered